

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF IOWA
EASTERN/WATERLOO DIVISION**

IN THE MATTER OF AMERICAN
COMMERCIAL LINES LLC as
OWNER and AMERICAN
COMMERCIAL BARGE LINE LLC as
OPERATOR, OF THE BARGE
“PV548B”, IN A CASE FOR
EXONERATION FROM AND/OR
LIMITATION OF LIABILITY,

Petitioners.

No. C04-1016 LRR

ORDER

The matter before the court is the Motion for Entry of Injunction and Notice to Claimants (docket no. 5) filed on May 5, 2004 by Petitioners American Commercial Lines LLC (“ACL”) and American Commercial Barge Line LLC (“ACBL”). Petitioners have requested expedited relief.

I. FACTUAL BACKGROUND

ACL is the title owner of Barge PV548B, its tackle, apparel and furniture (the “barge”). The barge is a 200' by 35' river barge with an 11' hull which is used to move commodities on the inland river system. On May 13, 2003, the barge was in the tow of the M/V MARY ANN, which was proceeding southbound on the Upper Mississippi River. The barge and eight other barges were separated from the M/V MARY ANN and its tow in order to lock through Lock and Dam 11 located near Upper Mississippi River Mile 583. Deckhand Matthew A. Miller was on the barge, working a lock line running from a caval on the barge to a location on the lock, when the line broke, striking and killing him. At the time of the accident, the barge was chartered to and operated by ACBL.

On April 27, 2004, Petitioners filed a Complaint in this court seeking exoneration

from and/or limitation of liability pursuant to the Limitation of Liability Act, 46 U.S.C. App. § 181 et seq. (the “Act”). On May 5, 2004, Petitioners filed a Motion for Entry of Injunction and Notice to Claimants. In their motion, Petitioners request that: (1) the court enjoin any and all claimants from filing, commencing or further proceeding in any actions against Petitioners and/or their affiliated and related companies or the barge, arising out of the May 13, 2003 incident, other than by filing a claim in these proceedings; (2) notice be given to all persons or entities asserting any claims with respect to the incident on May 13, 2003; (3) all persons or entities asserting any claims with respect to the incident on May 13, 2003 file their respective claims with the clerk of this court and serve the attorneys for Petitioners a copy thereof on or before June 18, 2004; and (4) notice be published in the *Telegraph Herald* once a week for four successive weeks prior to the date fixed for the filing of all claims.

II. DISCUSSION

The Act provides that the liability of a shipowner for damages arising from a maritime accident which occurs “without the privity or knowledge of such owner” shall not exceed the value of the vessel and its freight. 46 U.S.C. App. § 183(a). Section 186 of the Act extends the right of limitation to “the *charterer* of any vessel in case he shall man, victual and navigate such vessel at his own expense or by his own procurement.” Petitioners’ complaint alleges that ACBL was the charterer of the barge and therefore claims the benefit of § 186.

The Act was originally enacted in 1851. *Norwich Co. v. Wright*, 80 U.S. (13 Wall.) 104 (1871). The Act was intended to protect and foster the Nation’s commercial shipping industry. As the Supreme Court explained:

The great object of the law was to encourage ship-building and to induce capitalists to invest money in this branch of industry. Unless they can be induced to do so, the shipping interests of

this country must flag and decline. Those who are willing to manage and work ships are generally unable to build and fit them. They have plenty of hardiness and personal daring and enterprise, but they have little capital. On the other hand, those who have capital, and invest it in ships, incur a very large risk in exposing their property to the interests of the sea, and to the management of seafaring men, without making them liable for additional losses and damages to an indefinite amount. How many enterprises in mining, manufacturing, and internal improvements would be utterly impracticable if capitalists were not encouraged to invest in them through corporate institutions by which they are exempt from personal liability, or from liability except to a limited extent? The public interests require the investment of capital in shipbuilding, quite as much as in any of these enterprises.

Norwich, 80 U.S. at 121. It has been recognized that the Act's original purpose has long since become obsolete, *see Maryland Casualty Co. v. Cushing*, 347 U.S. 409, 437 (1954) (Black, J., dissenting), but the statute nonetheless remains on the books.

The Act establishes a procedure by which a shipowner may, within six months after receiving written notice of a claim, file a petition in federal court for limitation of its liability. Supplemental Admiralty and Maritime Claims Rule F(1) provides that a "vessel owner may file a complaint in the appropriate district court. . . for limitation of liability pursuant to statute." Rule F sets forth the process for filing a complaint seeking exoneration from liability or limitation of liability. *See Lewis v. Lewis & Clark Marine, Inc.*, 531 U.S. 438, 448, (2001). Rule F(1) requires the vessel owner to deposit with the district court or a trustee, security in an amount equal to the "value of the owner's interest in the vessel and pending freight." Once the shipowner posts security, Rule F(4) instructs the district court to "issue a notice to all persons asserting claims with respect to which the complaint seeks limitation, admonishing them to file their respective claims with the clerk

of court and to serve on the attorneys for the plaintiff a copy thereof on or before a date to be named in the notice.” Upon the shipowner’s request, Rule F(3) directs the district court to “enjoin the further prosecution of any action or proceeding against the plaintiff or plaintiff's property with respect to any claim subject to limitation in this action.”

The court’s review of the record leads it to conclude that Petitioners are entitled to limitation of liability under the Act. Petitioners allege they exercised due diligence to make the barge tight, staunch, properly manned, equipped and supplied and in all respects seaworthy and fit for the service in which the barge was engaged. Petitioners further state that the Complaint was filed within six months of the first written notice of any claim. Petitioners have filed a Stipulation of Value estimating the value of the barge, its equipment and appurtenances, and its pending freight to be no more than \$10,000.00. Petitioners also have stated their intention to deposit with the court the sum of \$10,000.00 within ten days after an order for the same.

III. CONCLUSION


IT IS HEREBY ORDERED that:

1. Petitioner’s Motion for Entry of Injunction and Notice to Claimants (docket no. 5) is GRANTED;
2. All claimants are hereby enjoined from filing, commencing or further proceeding in any actions against Petitioners and/or their affiliated and related companies, or Barge PV 548B, arising out of the May 13, 2003 incident, other than by filing claim in these proceedings;
3. Petitioners shall provide notice, pursuant to the provisions of Supplemental Rule F(4) of the Federal Rules of Civil Procedure, to all persons or entities asserting any claims with respect to the incident on or about May 13, 2003

involving Petitioners' vessel, Barge PV 548B, at Lock and Dam 11 at or near Mile 583 on the Upper Mississippi River. The Court further admonishes all such parties to file their respective claims with the Clerk of this Court and to serve on the attorneys of the Petitioners a copy thereof on or before July 2, 2004;

4. Petitioners shall publish notice in the *Telegraph Herald* once a week for four successive weeks prior to the date fixed hereinabove for the filing of claims, in accord with Supplemental Rule F(4) of the Federal Rules of Civil Procedure; and
5. Petitioners shall provide the names and addresses to the Clerk of Court of all claimants known to Petitioners and the Clerk of Court shall serve this Order upon all claimants known to Petitioners.

DATED this 26th day of May, 2004.



LINDA R. READE
JUDGE, U. S. DISTRICT COURT
NORTHERN DISTRICT OF IOWA